

Ahearn



Comptroller General
of the United States

Washington, D.C. 20548

145007

Decision

Matter of: B&C Industries, Inc.

File: B-244471.4

Date: October 7, 1991

Peter S. Latham, Esq., Latham & Latham, for the protester.
Richard L. Moorhouse, Esq., and Robert G. Bugge, Esq.,
Dunnells, DuVall & Porter, for Racal Filter Technologies,
Ltd., an interested party.

Jeffrey I. Kessler, Esq., Department of the Army, for the
agency.

M. Penny Ahearn, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bid was properly rejected as nonresponsive where shipping
information included in bid indicated that product offered
would not meet solicitation's packaging requirement.

DECISION

B&C Industries, Inc. protests the rejection of its bid as
nonresponsive under invitation for bids (IFB) No. DAAA09-91-
B-0022, issued by the Department of the Army for gas mask
canisters. The Army rejected the bid for noncompliance with
a material RFP delivery provision, the packaging requirement
for wooden containers.

The IFB required the packaging to be in accordance with
Special Packaging Instruction 5-3-1500, level A unit packaging
and level A packing (exterior container). Level A packing, at
issue here, required 18 canisters to be packed in three layers
within a class 2, style 2, 2 1/2 or 4, nailed-wood box or an
overseas type, cleated-plywood box.^{1/}

B&C's low bid was rejected as nonresponsive because of
information the firm provided in the solicitation clause
entitled "Guaranteed Shipping Characteristics." B&C checked
the blank in that clause indicating that its shipping
container was a "fiber box," rather than a "wood box," as

^{1/} In contrast, level B packing, included in the Special
Packaging Instructions, required a fiberboard box.

required. The agency intends to award the contract to Racal Filter Technologies, Ltd., the next low responsive bidder, upon a determination of responsibility.

B&C argues that the information in the shipping clause was relevant only for computation of transportation costs, and had no bearing on the responsiveness of its bid. The protester concludes that the container data it offered, while at variance with the packaging specification, could be waived by the contracting officer as a minor informality. Alternatively, the protester argues that the contracting officer should have given the firm an opportunity to correct its bid.

The RFP's "Guaranteed Shipping Characteristics" data clause provided that the requested information, such as type, dimensions, and weight of shipping container, would be used to determine transportation costs for evaluation purposes. In this regard, the solicitation's evaluation clause provided that each bid would be evaluated by adding to the F.O.B. origin price the cost of all transportation to the destinations specified. The shipping data clause further informed bidders that if the shipping costs for the supplies delivered exceeded the guaranteed shipping characteristics, the contract price would be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes, based on the bidder's guaranteed shipping characteristics, and the transportation costs that should have been used for evaluation purposes, based on correct shipping data.

The purpose of the "Guaranteed Shipping Characteristics" clause is to enable the government to ascertain its total cost for a proposed contract and to establish the basis for a contract price reduction in the event the maximum guaranteed shipping weights or dimensions, and therefore the government's actual transportation costs for F.O.B. origin items, are exceeded. See Canadian Commercial Corp., B-236850, Jan. 2, 1990, 90-1 CPD ¶ 3. A packaging requirement is a material element of delivery, and noncompliance with such a requirement requires rejection of a bid as nonresponsive. Tabco Prods., Inc., B-222632, Aug. 27, 1986, 86-2 CPD ¶ 231. Guaranteed shipping characteristics that overstate or understate the actual ones do not necessarily indicate that the bidder intended to qualify its bid^{2/}, but where the data inserted in

^{2/} For instance, we have noted that bidders may overstate shipping dimensions in order to eliminate the obligation to pay excess transportation costs in case the item delivered for shipment exceeds the stated dimensions. Canadian Commercial Corp., supra; Silent Hoist & Crane Co., Inc., B-210667, Dec. 23, 1983, 83-2 CPD ¶ 16. Similarly, we have noted that

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the shipping data clauses deviates from solicitation requirements, the data creates doubt that the specifications will be met, and the bid must be rejected as nonresponsive. Silent Hoist & Crane Co., supra; Star-Line Enters. Inc., B-210732, Oct. 12, 1983, 83-2 CPD ¶ 450 (bid properly rejected as nonresponsive where shipping data indicated that the vehicle offered would be narrower and longer than the specifications allowed).

Applying these standards here, the agency properly rejected B&C's bid as nonresponsive. The indication in B&C's bid that the shipping container would be fiber was directly contrary to the express requirement that the exterior packing container be wood.^{3/} We fail to see how B&C's indication that it would provide fiberboard packing can, under any reasonable interpretation, be read as consistent with the wooden containers requirement. We thus share the agency's conclusion that it at least casts doubt on B&C's intention to comply with the wooden packing requirement. B&C's insertion of the nonconforming container type in the shipping data clause, by creating an ambiguity as to whether the firm's shipping container would conform to the material specification packaging requirement, rendered the bid nonresponsive. See Star-Line Enters., Inc., supra; Stewart-Warner Corp., B-220788, Oct. 30, 1985, 85-2 CPD ¶ 494. Consequently, the agency properly rejected the bid.

Our conclusion is not changed by the fact that B&C may not have intended to modify the IFB packaging term, since for purposes of bid evaluation, the offeror's intention must be determined from the bidding documents themselves. See Steward-Warner Corp., supra. To permit B&C to explain its intention in bidding, or to correct its bid to make it responsive, after bid opening, would be tantamount to

2/ (...continued)

bidders may understate the shipping dimensions as an alternative to reducing the price for the item itself. Capital Indus., Inc., B-190818, July 7, 1978, 78-2 CPD ¶ 17.

3/ The protester argues that its designation of a fiber box is not inconsistent with use of a wood box because the terms wood and fiberboard overlap in common usage and dictionary definitions. We disagree. The Special Packaging Instructions referred to in the solicitation clearly distinguished between two types of packing, level A, required in the solicitation here, consisting of a wood box, and level B, consisting of a fiberboard box. Under these circumstances, it was not reasonable to conclude that a fiberboard box would meet the requirement for a wood box.

improperly granting the firm an opportunity to submit a new bid, The Homer D. Bronson Co., B-220162, Nov. 22, 1985, 85-2 CPD ¶ 591; the bidder would have the unfair competitive advantage of choosing to accept or reject the contract after bids were exposed by choosing at that juncture whether to make its bid responsive. Stewart-Warner Corp., supra.4/

The protest is dismissed.


for John M. Melody
Assistant General Counsel

4/ B&C further complains that the timing of the preaward survey, prior to rejection of its bid as nonresponsive, indicates that its bid was initially determined responsive. See Army Federal Acquisition Regulation Supplement § 14.404-2. We need not consider this suggestion since the action the agency in fact took was to determine B&C's bid nonresponsive, and we have determined that this action was legally supportable. In any case, to the extent that the protester's complaint is on the premature timing of the preaward survey, we have no basis to object to a preaward survey made prior to the final determination regarding the acceptability of bids, when at the time the survey was conducted the possibility of award existed. See Achievement Prods., Inc., B-230659, May 23, 1988, 88-1 CPD ¶ 488.